The SPS Agreement and Pesticide MRLs

Workshop on Pesticide MRLs
24-25 October 2016
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Overview

1. Relevance of the SPS Agreement to Pesticide MRLs
2. Relevant provisions of the SPS Agreement
   - Scientific justification
3. Highlights of relevant jurisprudence related to MRLs
4. SPS Committee and Pesticide MRLs
   - Notifications and Specific Trade Concerns
Objective of the SPS Agreement

Recognizing the right to protect human, animal, plant life or health

Avoiding unnecessary barriers to trade

Relevance of SPS Agreement to Pesticide MRLs?
1. Relevance of the SPS Agreement to Pesticide MRLs

What is an SPS measure?

Measures taken to protect health and life from:

- Additives, contaminants, toxins or disease-causing organisms in their food, beverages or feedstuffs
- Plant or animal-carried diseases (zoonoses)
- Pests, diseases or disease-carrying or causing organisms
- Damage caused by the entry, establishment or spread of pests
1. Relevance of the SPS Agreement to Pesticide MRLs

What is an SPS measure?

Measures taken to protect health and life from:

Additives, contaminants, toxins or disease-causing organisms in their food, beverages or feedstuffs

Footnote 4 (Annex A)
For the purpose of these definitions...“contaminants” include pesticide and veterinary drug residues as well as extraneous matter.
1. Relevance of the SPS Agreement to Pesticide MRLs

**Article 8 & Annex C**

Control, inspection and approval procedures to check and ensure the fulfilment of SPS measures:

**Including national systems for:**

- Approving the use of additives
- Establishing tolerances for contaminants in foods, beverages or feedstuffs
- Ensuring procedures consistent with the SPS Agreement

**Annex C**

- Any procedure to check and ensure the fulfilment of SPS measures

**Footnote 7 (Annex C)**

Control, inspection and approval procedures include, inter alia, procedures for sampling, testing and certification.
2. Relevant Provisions of the SPS Agreement

- **Scientific justification** (Arts 2, 3 & 5)
- **Non-discrimination** (Art 2.3)
- **Equivalence** (Art 4)
- **Regionalization** (Art 6)
- **Transparency** (Art 7 & Annex B)
- **Control, inspection and approval procedures** (Art 8 & Annex C)
- **Technical Assistance/ S&DT** (Arts 9, 10)

No arbitrary or unjustifiable differentiation in SPS measures where identical/similar conditions exist.
2. Relevant Provisions of the SPS Agreement

- Non-discrimination (Art 2.3)
- Scientific justification (Arts 2, 3 & 5)
- Equivalence (Art 4)
- Regionalization (Art 6)
- Transparency (Art 7 & Annex B)
- Technical Assistance/ S&DT (Arts 9, 10)
- Control, inspection and approval procedures (Art 8 & Annex C)

- Harmonization
- Risk assessment
- Consistency
- Least trade-restrictive
2. Relevant Provisions of the SPS Agreement

Scientific Justification

Members to base SPS measures (e.g. pesticide MRLs) on:

- International standards, guidelines or recommendations (Article 3.1)

- Risk Assessment (Article 5)

  - Appropriate to the circumstances of SPS risks
  - Take into account risk assessment techniques developed by relevant international organizations

Risk assessment exception (Art 5.7)

- Insufficient scientific evidence; provisional measure; seek to obtain additional information;
- Review SPS measure within a reasonable period of time
2. Relevant Provisions of the SPS Agreement

- **Non-discrimination** (Art 2.3)
- **Scientific justification** (Arts 2, 3 & 5)
- **Equivalence** (Art 4)
- **Regionalization** (Art 6)
- **Transparency** (Art 7 & Annex B)
- **Control, inspection and approval procedures** (Art 8 & Annex C)
- **Technical Assistance/ S&DT** (Arts 9, 10)

Notify changes in SPS measures at a draft stage

New or modified regulation
+ No existing international standard or Different than the international standard + Significant impact on trade (restricting or facilitating)
2. Relevant Provisions of the SPS Agreement

- Non-discrimination (Art 2.3)
- Scientific justification (Arts 2, 3 & 5)
- Equivalence (Art 4)
- Regionalization (Art 6)
- Transparency (Art 7 & Annex B)
- Technical Assistance/ S&DT (Arts 9, 10)
- Control, inspection and approval procedures (Art 8 & Annex C)

- No undue delay
- Publishing of standard processing period

Operation of these procedures consistent with the SPS Agreement
2. Relevant Provisions of the SPS Agreement

- Non-discrimination (Art 2.3)
- Scientific justification (Arts 2, 3 & 5)
- Equivalence (Art 4)
- Regionalization (Art 6)
- Transparency (Art 7 & Annex B)
- Control, inspection and approval procedures (Art 8 & Annex C)
- Technical Assistance/ S&DT (Arts 9, 10)

- Facilitate technical assistance
- Consider needs of developing countries
2. Relevant Provisions of the SPS Agreement

- **Non-discrimination** (Art 2.3)
- **Scientific justification** (Arts 2, 3 & 5)
- **Equivalence** (Art 4)
- **Regionalization** (Art 6)
- **Transparency** (Art 7 & Annex B)
- **Technical Assistance/ S&DT** (Arts 9, 10)
- **Control, inspection and approval procedures** (Art 8 & Annex C)

Accept equivalent SPS measures which achieve the importer’s ALOP

Recognition of pest- or disease-free areas
3. WTO Disputes

- **Food Safety**
  - US/Canada vs. EC - Hormones (WT/DS26, 48)
  - (EC vs. US/ Canada – Continued Suspension (WT/DS320, 321)
  - China vs. US – Poultry (WT/DS392)
  - [Canada vs. Korea - BSE (WT/DS391)]

- **Food Safety + Plant & Animal Health**
  - US/Canada/Argentina vs. EC - GMOs (WT/DS291, 292, 293)

- **Animal Health**
  - Canada / US vs. Australia - Salmon (WT/DS18, 21)
  - US vs. India – Avian Influenza (WT/DS430)
  - Argentina vs. US – Foot-and-Mouth Disease (FMD) (WT/DS447)
  - EU vs. Russian Federation – African Swine Fever (WT/DS475)

- **Plant Protection**
  - US vs. Japan - Variety Testing (WT/DS76)
  - US vs. Japan – Fire blight (WT/DS245)
  - New Zealand vs. Australia - Apples (WT/DS367)
No dispute to date based on pesticide MRLs.

Only 1 case which specifically dealt with MRLs (beef hormone residues):

- **US/Canada vs. EC - Hormones (WT/DS26, 48)**
3. WTO Disputes  
MRLs and Relevant Jurisprudence

Key lessons learned

- Non-use of an international standard (Article 3.3) requires a risk assessment (Article 5)
- No need to carry out “own” risk assessment
- Risk assessment need not be quantitative
- Can go beyond controlled lab conditions, assess risk in real world
- Can consider divergent, minority scientific views
- “Based on” requires rational relationship between measure and risk assessment
3. WTO Disputes
MRLs and Relevant Jurisprudence

Key lessons learned

- **Consistency (Art 5.5)**
  - Three cumulative elements to be met:
    1. Differences in ALOP in different, but comparable situations (e.g. risks of similar biological consequences)
    2. Different levels are arbitrary or unjustifiable
    3. Differences result in discrimination or disguised restriction to trade

- **Provisional Measures (Art 5.7)**
  - Risk assessment exception
    - The precautionary principle does not override obligations to undertake a risk assessment (Articles 5.1 and 5.2). Precaution “finds reflection in Article 5.7”.

Avoid arbitrary distinctions in ALOP

US/Canada vs. EC - Hormones
4. SPS Committee and Pesticide MRLs
Statistics on Notifications

All notifications = 20,510
MRL-related notifications = 3,573
4. SPS Committee and Pesticide MRLs
Statistics on Notifications

MRL-related Notifications

- Regular Notification
- Addenda/ Corrigenda
- Emergency Notification
4. SPS Committee and Pesticide MRLs
Statistics on Notifications

- NA
- SA, CA and the Caribbean
- Europe
- Asia
- CIS
- Africa
- Middle East

MRL notifications
Other notifications
4. SPS Committee and Pesticide MRLs
Statistics on Notifications

Is there a relevant international standard?

MRL notifications - Regular

- None: 72.1%
- Codex: 27.6%
- IPPC: 0.1%
- OIE: 0.2%

All notifications - Regular

- None: 53%
- Codex: 25%
- IPPC: 13%
- OIE: 9%
4. SPS Committee and Pesticide MRLs
Statistics on Notifications

Conformity with Codex standards?

MRL notifications - Regular

- Yes: 34%
- No: 66%

ALL notifications - Regular

- Yes: 53%
- No: 47%
4. SPS Committee and Pesticide MRLs
Statistics on Specific Trade Concerns (STCs)

ALL STCs raised = 408
4. SPS Committee and Pesticide MRLs
Statistics on Specific Trade Concerns (STCs)

- Plant Health: 24%
- Animal Health: 39%
- Other concerns: 6%
- Food Safety - Other than Pesticide MRLs: 25%
- Food Safety - Pesticide MRLs: 6%

23 STCs raised related to pesticide MRLs
4. SPS Committee and Pesticide MRLs
Statistics on Specific Trade Concerns (STCs)

Number of Members

- Members Raising the Issue: 7
- Supporting Members: 9
- Members Maintaining the Measure: 19

7 STCs resolved or partially resolved

- Developed Countries
- Developing Countries
Thank you!